A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Writ Petition No.2079 of 2003

PETITIONER: Gulab Khatri, son of Hetmal Khatri, aged about 39 years, Occupation- Member, Zila Panchayat, Durg, Resident of Village P.S. Block and Tehsil- Gurur, District-Durg (C.G.).

Versus

RESPONDENTS:

1. State of Chhattisgarh, Through Secretary, Department of Panchayat and Social Welfare, Mantralaya, D.K.S. Bhawan, Shastri Chowk, Raipur (C.G.).
2. Director, Panchayat and Social Welfare, Raipur (C.G.).
3. Sub Divisional Officer, Gurur, District- Durg (C.G.).
4. Superintendent of Police, District-Durg (C.G.).
5. Shri Lokendra Yadav, Member of Chhattisgarh legislative Assembly, R/o Tarod, District Durg (C.G.).

POST FOR ORDER ON 8th August, 2003

Sd/-
L.C. Bhadoo
Judge

(39)

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Shri Rajeev Shrivastava, Advocate: For the petitioner

Shri Sanjay K. Agrawal, Dy. Advocate General: For the respondents' No. 1 to 4.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 19th August, 2003)

1. By this writ petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the action of the Respondent No.2 i.e. issuance of a show cause notice bearing No. 28/Panchayat/2003-IV dated 30.6.2003 issued under section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993.

(60)

2. The petitioner's petition is that he is a member of the Zila Panchayat Durg. He belongs to a reputed family of Village-Gurur. His father Shri Hetmal Khatri was Sarpanch of the village Gurur for about 15 years. His uncle Late Shri Mishrilal Khatri was a Member of Balod Assembly Segment in the erstwhile State of Madhya Pradesh. By virtue of the family background the petitioner is having good reputation and holding public relations in Balod and its surrounding assembly segment. It is known to the Respondent No.5 that the petitioner is having capacity to influence at least four assembly seats of the Chhattisgarh Legislative Assembly. Panchayat Elections were held in the year 2000 and the petitioner won from Gurur seat for the Zila Panchayat Durg with a thumping majority. The petitioner is a committed follower of Shri Vidhya Charan Shukl who was earlier a member of the Indian National Congress which is ruling party in the State of Chhattisgarh. The petitioner has devoted his life for oppressed and depressed cause of the society. The petitioner raised his voice to secure the life of the downtrodden and cause of the society. The petitioner is very closely related with the farmers. He conducted an agitation against the Govt. officers in the year 1999 in purchasing of paddy, and staged a Dharna to protect the interest of the poor farmers. In the year 2001 some irregularities were committed by the Govt. officers in survey of population. For this irregularity when all the peaceful process of ventilating the grievance failed to produce any fruit then the petitioner organized a mass movement and staged Dharna, and due to that agitation an enquiry was ordered and irregularities were corrected. Due to the various activities of the petitioner it is a general feeling in the ruling congress party that the petitioner can turn a great number of votes in favour of the

ruling congress party in the coming Vidhansabha elections which are scheduled to be held in the month of November 2003.

3. In the month of April 2003 the petitioner's ideal leader resigned from the Indian National Congress and joined the Nationalist Congress Party, therefore the petitioner also joined the N.C.P. Reacting immediately on the petitioner's step Respondent No.5 who is a sitting M.L.A. from Balod Assembly Segment and Member of the Indian National Congress which is a ruling party in the State, exerted pressure on the petitioner and got him arrested on 9th April, 2003 in order to prevent him from welcoming Shri Vidya Charan Shukl. Ultimately the petitioner was released in the night of 12th and 13th April 2003. The Respondent No.5 asked many a times to the petitioner not to support Shri Vidhya Charan Shukl and the petitioner should immediately quit the camp of Shri Vidya Charan Shukl. When the petitioner refused to knee down against the demand of Respondent No.5, he influenced the Respondents No. 1 and 2 to issue show-cause notice dt. 30.6.2003 for removal of the petitioner from the post of Member Zila Panchayat Durg. A copy of which is marked as Annexure P/3.

4. The notice dated 30.6.2003 itself states that one offence was registered against the petitioner in the year 1996; four offences were registered in the year 1999; and two offences were registered in the year 2001. It is the most humble and respectful submission of the petitioner that so far as the offence registered in the year 1999 under section 107 and 116 of the Cr.P.C. are concerned, till date the petitioner has not been served with any intimation that these offences have been registered against the petitioner. So far as the offences registered in the year 1996 and 2001 are concerned they are,

not the offence which are cognizable under the Panchayat Raj Adhiniyam. These offences were registered against the petitioner when he was fighting and organizing rallies to protect the interest of the downtrodden class of the society. All these rallies were related to Kisan Andolan in District- Durg. So far as the Crime No. 76/96 is concerned the conviction order was passed on 7.12.2000, the appeal against the same is pending, and the sentence has been suspended by the competent Court.

5. The notice has been issued with malafide intention. The petitioner was a Member of Janpad Panchayat for the year 1995 to 2000 and in the year 2000 he has been elected for Zila Panchayat. The offences were registered way back in 1996, 1999 and 2001. As the petitioner was member of the Indian National Congress no action was taken against him. As soon as the petitioner joined the hands of Shri Vidhya Charan Shukl the show cause notice was issued to him on the basis of the memorandum of Respondent No.4. There is no basis under the Adhiniyam but the same has been issued with malafide intention to harass the petitioner and with ulterior motive to compel the petitioner to resign from N.C.P.

6. Vide show-cause notice dated 30.6.2003 the Respondent No.2 has directed the petitioner to appear on 16.7.2003. Though the petitioner is appearing and filing the reply but the petitioner is sure that he will not get justice from the Respondent No.2 because with some other workers of N.C.P. also the State Government is behaving in the similar manner as it is behaving with the petitioner. Therefore, to command the respondents to produce the entire record for perusal and writ of certiorari be issued for quashing the show cause notice dt. 30.6.2003 Annexure P/3.

7. Return has been filed on behalf of the Respondents No. 1 and 2. They have admitted issuance of the show cause notice Annexure P/3 dt. 30th June 2003 by the prescribed authority under section 40 of the Panchayat Raj Adhiniyam, 1993. The petitioner's petition is premature and is not maintainable as it is merely directed against the show cause notice. The petitioner after filing reply Annexure R-1/A before the prescribed authority and without awaiting the decision has rushed to this Court. The petitioner will have full opportunity to contest his case before the prescribed authority and he will have full opportunity of hearing in accordance with law. The petitioner is free to raise all these grounds taken in this petition and hence the petition filed by the petitioner without making detailed submission is not only premature but also not maintainable on this ground. The petition deserves to be dismissed.

8. It is well settled law that the show cause notice is beginning of the matter and not the end of the matter. Since the petitioner has already submitted his reply to the Respondent No.2, after submission of the reply to the jurisdiction of that authority, the petition is not at all maintainable and deserves to be dismissed. The answering respondents are not aware about the change of the party by the petitioner all the allegations in this regard are irrelevant. Para 5.14 to 5.16 of the petition are denied. Notice has been issued by the Respondent No.2 on the basis of the material available on record and it has not been issued by the Respondent No.1. There is no question of influence by any authority. The allegations of malafides are unspecific and unclear. The petitioner has already filed reply before the prescribed authority, therefore the petition be dismissed.

9. I have heard learned counsel for the petitioner Mr. Rajeev Shrivastava and learned counsel for the Respondents No. 1 to 4 Shri Sanjay K. Agarwal, Deputy Advocate General.

10. As far as preliminary objection raised by the Respondents No. 1 and 2 is concerned there is a settled law that against show cause notice writ lies only when the authority is having no jurisdiction to issue such notice and show cause notice does not meet the requirements as envisaged under the particular section under which it has been issued i.e. in the present case under section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993.

11. As far as the first point is concerned, learned counsel for the petitioner has not questioned the authority of the Respondent No.2 to issue the notice. Learned counsel for the petitioner argued that so far as about criminal conduct of the petitioner is concerned there is a specific provision under section 39 of the Adhiniyam and if any of the offence is covered under that section is committed by the office bearer of the Panchayat then he can be suspended. Since the case of the petitioner was not covered under section 39 of the Panchayat Raj Adhiniyam, which is a specific provision for criminal conduct of the office bearer, simply based on the criminal cases mentioned in the show cause notice, the notice has been issued for removal under section 40 (1). He further argued that under section 40 (1) (A) and (B), the action for removal can be initiated if the office bearer of the panchayat is found to have indulged in misconduct in discharge of his duties and if his continuance is undesirable in the interest of the public. This section provides that no person shall be removed unless he is given an opportunity to show-cause why he should not be removed from his office and in this case no public interest is

involved. Therefore the show cause notice itself is defective and on this ground the notice issued to the petitioner does not fall under the category of the public interest. Therefore the show cause notice does not meet the requirement of sub-section (1)(B) of section 40.

12. On the other hand learned counsel for the respondent placed reliance on a decision in the case of M/s Procter & Gamble Home Products Ltd. Vs. Commissioner of Customs & Central Excise, reported in 2001 (1) MPJR 191 and also passing remarks of the Hon'ble Apex Court in para-3 of the judgment in the case of Bhaiji Vs. Sub Divisional Officer & others reported in 2003 (II) MPJR 1, in which it has been mentioned that the petitioner filed a wit petition before the High Court against the show cause notice of the Sub Divisional Officer which was rejected by the High Court.

13. Now coming to the question as to whether the allegations against the petitioner which are mentioned in the show cause notice about the pendency of the seven criminal cases and in first case the petitioner had been convicted under section 353 and 186 of the I.P.C. by the Court of Judicial Magistrate First Class on 7.1.2000, and the third charge that the petitioner is in the habit of indulging in mar-peet with the Govt. employees for causing obstruction in the work of the Govt. in my opinion prima-facie these allegations against the petitioner are covered under clause (b) of sub-section (1) of Section 40 of the Act. At this stage, it is not proper to express any opinion in detailed on the merit of the case because the same may prejudice the cause of either of the party.

14. As far as the arguments of learned counsel for the petitioner that the allegations levelled in the show cause notice are not substantiated and

established with supporting material, therefore, the show cause notice is bad. Learned counsel for the petitioner in support of his contention relied upon the decision rendered by the Apex Court reported in **A.I.R. 1972 SC 1571** in the case of **Bhagat Ram Patanga Vs. State of Punjab** and **(2001) 6 SCC 260 Tarlochan Dev Sharma Vs. State of Punjab and others; 1980 MPLJ 34 Bansmani Prasad Veerbhadra Shukla Vs. State of M.P. & others; 1998 (1) JLJ 420 Sarita Mabre (Smt.) Vs. State of M. P. and others.** As far as these decisions are concerned, these are against the final decisions of the concerned authority and in this matter still the show cause notice has been issued to the petitioner and against the show cause notice no writ petition lies as has been held by the M. P. High Court in the case reported in 2001 (1) MPJR 191.

15. The petitioner is entitled to raise all the objections before the Respondent No.2 which are raised by him in this petition and the Respondent No.2 after giving the petitioner a reasonable opportunity against the show cause notice and after hearing will decide all the questions. Even if the petitioner has already submitted his reply to the show cause notice looking to the facts and circumstances of the case I deem it appropriate to give one more opportunity to the petitioner to raise all these points before respondent No.2 which are raised and argued by the counsel for the petitioner before this Court and for this purpose 10 days time is allowed to the petitioner and the Respondent No.2 after considering the reply and hearing the petitioner will decide the matter in accordance with law.

16. In the result, the writ petition has no force being premature it is liable to be dismissed and the same is dismissed. However the petitioner is allowed 10

days time to raise all the objections before the respondent No.2 which are raised and argued in this writ petition and the competent authority will consider and decide after hearing the petitioner.

17. The writ petition is disposed of in the above terms.

Sd/-
L.C. Bhadoo
Judge